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transportation, Congress were to attempt to control the processes of production and manufacture with the avowed or ostensible purpose of regulating matters which are of domestic or local concern, and with no federal policy to be promoted, it must be that the line, faint though it be, which marks the boundary of federal and state power, would seemingly be overstepped,* * * It may be * * * that Congress can prohibit the transportation of articles which have not been produced under conditions guaranteeing their purity and fitness for consumption. * * * Here there would be an element of the federal policy—a national guaranty of the quality of the article. But federal laws regulating the hours of labor and prohibiting the employment of children, and making a conformity to those laws a condition to the interstate transportation of the goods manufactured * * * can have no relation to anything more than matters of mere local concern, as it is difficult to see how such regulations can be embraced by any conceivable rule of commerce, or how they can be considered such police regulations as would serve any distinctively federal purpose." (pp. 115-117).

On another moot point, the author says: "The emphatic and repeated declarations of the United States Supreme Court, * * * that insurance is not commerce would seem to preclude further inquiry. All the cases, however, arose on state statutes. * * * If * * * the subject of insurance may be said to be embraced by the term commerce, as generally defined, as understood by economists, or as colloquially used, the courts would probably be constrained to accept the legislative declaration that insurance is commerce, and to permit the operation of federal legislation on interstate and foreign insurance transactions. It is not easily perceivable, however, how Congress can constitutionally legislate on the subject, except indirectly, as by denying mail and interstate transportation facilities to a company which is not complying with the regulations prescribed by or under the authority of Congress." (p. 247). This it may be observed is precisely the method of regulation recommended to the American Bar Association by its committee on insurance, at the annual meeting for 1907.

Enough has thus been quoted to show that while Mr. Calvert's work is largely an analysis of the cases, it is very much more than a mere digest. It is scholarly analysis, and leads to pretty definite results. The use of the book is facilitated by what seems to be an adequate index. The table of cases shows that the author has used in the neighborhood of eight hundred cases. The book is written in direct, readable style. It is decidedly a work which any student of constitutional law or any lawyer whose practice touches the subject of interstate commerce would find interesting, suggestive and profitable.

H. M. B.

THE FEDERAL POWER OVER CARRIERS AND CORPORATIONS. By E. Parmalee Prentice, of New York. New York: Macmillan Company, 1907, pp. xi, 244.

This book covers substantially the same ground as does Calvert's Regulation of Commerce, reviewed above, but it is written from a very different

point of view and the author reaches conclusions directly opposite to those expressed by Mr. Calvert. In contrast to the other work, this book is controversial and is apparently written to sustain views entertained by the author before he began the work of preparation of this volume. Mr. Prentice's associations are such as would naturally lead him to hold the views as to the power of Congress over carriers and corporations which corporation lawyers and managers habitually entertain. And the many opinions which Mr. Prentice expresses in this book are all on the side of the strict construction of the powers of Congress, and an insistence that legal and commercial considerations require that the regulation of commerce be left largely to the different states. Notwithstanding all this, however, and the evident purpose of the author to demonstrate his theory rather than seek for the truth only, one does not get the impression that the book is other than the honest expression of the author's deliberate opinions.

The point of view of Mr. Prentice is clearly stated in his preface. Thus he says, on page v: "It is common in discussing these questions largely to disregard the purposes which influenced the formation of our government and for a century directed its administration. Present questions it is urged are new, beyond the contemplation of the statesmen of a century ago, and new meanings must therefore be given to the Constitution. This is surely a most dangerous and mistaken notion." Again on page vii, he says, quoting from Mr. Chief Justice TANEY: "The Constitution speaks not only in the same words, but with the same meaning and intent with which it spoke when it came from the hands of the framers and was voted on and adopted by the people of the United States." All through his book Mr. Prentice insists upon a most narrow and literal interpretation of this language as being the true rule of constitutional construction. In the chapter devoted to the thesis that constitutional government rests upon local self-government and personal liberty, the author proceeds to fairly outline his views by stating the purpose of the commerce clause in the Constitution of the United States, relying upon the undoubted historic fact that that and other clauses of the Constitution were adopted largely for the purpose of giving the federal government power to protect the foreign commerce of this country from discriminatory and injurious legislation of foreign countries, and to prevent such legislation among the several states as against the commerce of other states. The author in substance maintains the proposition that the commerce clause should be construed so as to permit Congress to effectuate only those objects and purposes.

In chapters III and IV, in which he discusses the great commerce cases decided by the Supreme Court of the United States, beginning with *Gibbons v. Ogden*, 9 Wheat. 1, and including *Cooley v. The Port Wardens*, 12 How. 299, the author seeks to establish what seems to the present reviewer an almost wholly unfounded narrowness of construction of the views expressed by the court. He maintains that as to interstate commerce Congress has little or no power beyond that necessary to prevent interference by the respective states with the free and unburdened transportation from one state to another. Thus, on page 123, we find the following: "Over this commerce

federal power extended, as has been shown, so far as to enable Congress to control foreign relations, to tax foreign commerce, and exclude foreign vessels from the coasting trade, and to protect commerce among the states from restrictions forbidden by the Constitution. To this extent then, federal power over navigation imported a limited jurisdiction over carriers. The duties which the carrier owed to the public were, however, even in the case of transportation extending across state lines, derived from the state, not from the United States, and were unaffected by this new jurisdiction." On page 82 the author maintains that Marshall's broad definition of commerce did not include transportation in its relation to the carrier. While this is doubtless true in a sense, Mr. Prentice apparently intends his statement to mean that Congress has no power to regulate interstate carriers. On page 33, he says: "That is, in other words, the right to engage in interstate commerce is part of the inalienable liberty which, according to the philosophy of that time, has a higher source than the Constitution itself, and whose protection is one of the general purposes for which government is instituted." This, according to the author, precludes the regulation of interstate commerce, except for the narrow purposes above indicated.

In chapter VI the author denies utterly the existence of any power in Congress to establish federal incorporation except for purely federal purposes, and of course this, according to Mr. Prentice, excludes incorporation of carriers, and of manufacturing and commercial companies.

The book is based upon a careful and very comprehensive study not only of Supreme Court cases, but of such documents as *The Federalist*, the Journals of the Constitutional Convention, the writings of many economists and historians, and the debates of Congress. Unfortunately for the convincing effect of his book, the citations include a number of speeches of senators and representatives in Congress which were unquestionably delivered largely for political effect. Nevertheless, the book is by far the ablest presentation of the railway trust and corporation view of this power of Congress which the present reviewer has seen. In compactness and directness of statement it approaches brilliancy. It is a work which should not be neglected by any student of the subject.

H. M. B.

THE CLERK'S ASSISTANT, containing a large variety of legal forms and instruments adapted not only to county and town officers, but to the wants of professional and business men throughout the United States. By Henry S. McCall, Professor of the Law of Wills and Real Property in the Albany Law School. Revised and largely rewritten by H. B. Bradbury. Sixth Edition. New York: The Banks Law Publishing Co., 1907, pp. xii, 1216.

A prospective purchaser of this collection of forms, seeing the date 1907 on the title-page, might reasonably expect to find in it forms brought down to date and adapted to the present state of the law. Such an expectation would be grievously disappointed; the book is not a 1907 book, but is the familiar sixth edition of this work, which was published in 1902, and which